A **UNGKU SULAIMAN ABD MAJID & ANOR**

v.

PENGARAH TANAH DAN GALIAN JOHOR & ANOR

B FEDERAL COURT, PUTRAJAYA
ZULKEFLI MAKINUDIN FCJ
RAUS SHARIF FCJ
ABDULL HAMID EMBONG FCJ
[CIVIL APPEAL NO: 01-4-2010 (J)]
C 10 MAY 2011

LAND LAW: *Acquisition of land - Validity - State Government redeeming land from chettiar to whom land charged - Redemption executed upon order of Sultan - Whether redemption and acquisition valid and*
D *lawful - Whether beneficiaries entitled to apply for return of land or compensation from State Government - Redemption effected in 1895 - Law of limitation - Whether had set in - Land Enactment of the State of Johore 1950 (Johore Enactment No. 1), s. 54 - Applicability*

LIMITATION: *Accrual of cause of action - Acquisition of land - State*
E *Government redeeming land from chettiar to whom land charged - Redemption executed 115 years ago in 1895 - Law of limitation - Whether had set in - Whether beneficiaries barred from making any claim on property*

F This was an appeal against the decision of the Court of Appeal reversing the decision of the High Court ruling that the redemption of a piece of land belonging to one Ungku Abdullah ('the said property') by the State Government of Johore ('the State Government') in 1895, and its subsequent acquisition
G purportedly under s. 54 of the Land Enactment of the State of Johore 1950 (Johore Enactment No. 1) ('1950 Enactment'), was null and void, and that, notwithstanding that more than 100 years had lapsed since the redemption, the plaintiffs' administrators (and other beneficiaries) of the estate of Ungku Abdullah were not
H barred from claiming for the return of the said property, or for appropriate compensation or damages from the State Government. It was not in dispute that at the time of redemption, the said property was charged to a certain chettiar, that the redemption was upon the order of the Sultan of Johore then and that the
I said property was subsequently acquired and transferred to the Federal Government in 1951. Be that as it may, it was the view of the Court of Appeal, upon appraisal of the defendants' appeal,

that: (i) the beneficiaries of the late Ungku Abdullah were barred by the law of limitation from making any claim on the said property; (ii) the claim originated from a misconceived position that s. 54 of the 1950 Enactment was applicable and that on the facts and in the circumstances, the reference to s. 54 of the 1950 Enactment was entirely irrelevant; and (iii) the said property was redeemed in accordance with the law in force then in Johore. The plaintiffs had nevertheless successfully applied for leave to appeal on four questions of law, and that being so, it fell upon the learned justices of the apex court herein to deliberate on and resolve, *inter alia*, the following questions, namely: (i) whether the State Government could redeem the said property without the consent and instruction of the beneficiaries of the late Ungku Abdullah, and in any case, whether such redemption was in accordance with the law; and (ii) whether the law of limitation applied to the facts of the present case. These issues aside, it was the plaintiffs' further argument that the Court of Appeal was in breach of natural justice and procedural fairness when it dealt with "some other issues" not raised or argued by the parties.

Held (dismissing the appeal with costs)
Per Raus Sharif FCJ delivering the judgment of the court:

(1) The so-called "some other issues" dealt with by the Court of Appeal were in fact related to the three main issues decided by the High Court. What the Court of Appeal had done was that it did its own research and produced its own authorities to support its reasoning in relation to the three issues decided by the learned High Court judge. There was nothing wrong with that. Indeed, judges are encouraged to do their own research to supplement the submissions and authorities submitted by counsel. Thus, the issue of breach of natural justice and procedural fairness was really a non-issue. (para 15)

(2) The learned High Court judge had erred in holding that the acquisition of the said property was null and void. The plaintiffs relied on a letter dated 29 June 1998 from the State Legal Advisor, Johore and the result of a search of the said property dated 28 May 1998 to claim that the said property had been unlawfully acquired by the State Government. In the letter, the State Legal Advisor had made reference to s. 54 of the 1950 Enactment. The section however was so invoked for the purposes of rectification of the title in order

for the said property to be vested with the State Government. It was not an act of acquisition of the said property as is generally understood under the Land Acquisition Act 1960. Thus, the reference to s. 54 of the 1950 Enactment by the plaintiffs to ground their claim was wrong. The letter of the State Legal Advisor on 29 June 1998 was and had been taken out of context. (paras 16 & 17)

(3) On the facts of this case, the said property was restored to the State Government when it was charged by Ungku Abdullah and redeemed on the instruction of His Royal Highness, the Sultan of Johore then. In charging the said property, Ungku Abdullah had indirectly appointed the chettiar to be his attorney and having the authority to sell the said property if the debt was not paid. Therefore, when the State Government settled the debt, the said property had lawfully become the property of the State Government. (para 18)

(4) It follows that if Ungku Abdullah's beneficiaries are contending that the said property was redeemed without their consent, it would be up to them to set aside the redemption then. They failed to do so and therefore, in so far as the State Government is concerned, the redemption was never set aside. The consequence of that would be the State Government became the owner of the said property. Also, the redemption took place more than 115 years ago and it was too late now for the plaintiffs as beneficiaries of Ungku Abdullah to challenge the redemption of the said property. Surely in this case limitation has set in. (para 19)

(5) All the questions, in the manner they were drafted, need not be answered. The questions presuppose that there was an act which was a nullity. The onus was on the plaintiffs to show that the act of the State Government in redeeming the said property in 1895 was wrong in law and in breach of the laws in force at the material time. The plaintiffs had failed to do so. Thus, there was no basis for the learned High Court judge to hold that the transfer of the said property by way of redemption by the State Government was a nullity. It follows that his findings that "time remained at large and the law of limitation was inapplicable and it cannot govern the outcome of the present case at all" could not be supported. (para 20)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan terhadap keputusan Mahkamah Rayuan kerana mengakas keputusan Mahkamah Tinggi yang memutuskan bahawa penebusan sebidang tanah yang dimiliki oleh seorang Ungku Abdullah ('hartanah tersebut') oleh Kerajaan Negeri Johor ('Kerajaan Negeri') pada tahun 1895, dan pengambilannya kemudian yang kelihatannya dilaksanakan di bawah s. 54 Enakmen Tanah Johor 1950 (No. 1) ('Enakmen 1950'), adalah batal dan tak sah, dan bahawa, walaupun lebih 100 tahun telah berlalu, plaintif-plaintif yang merupakan pentadbir pusaka Ungku Abdullah (serta waris-waris lain) adalah tidak dihalang dari menuntut supaya hartanah tersebut dikembalikan kepada mereka, atau supaya Kerajaan Negeri membayar pampasan atau gantirugi kepada mereka. Tidak dinafikan bahawa pada waktu penebusan, hartanah tersebut telah digadai kepada seorang chettiar, bahawa penebusan adalah atas perintah Sultan Johor ketika itu dan bahawa hartanah tersebut kemudiannya telah diambil dan pada tahun 1951 diserahkan kepada Kerajaan Persekutuan. Apapun, menjadi pandangan Mahkamah Rayuan, sewaktu mendengar rayuan defendan-defendan bahawa: (i) waris-waris arwah Ungku Abdullah telah dihalang oleh undang-undang penghadan dari membuat sebarang tuntutan terhadap hartanah tersebut; (ii) tuntutan adalah bersandar kepada salah tanggap bahawa s. 54 Enakmen 1950 terpakai dan bahawa berdasarkan fakta dan halkeadaan kes, rujukan kepada s. 54 Enakmen 1950 adalah samasekali tidak relevan; dan (iii) hartanah tersebut ditebus mengikut undang-undang yang terpakai di Johor ketika itu. Plaintif-plaintif bagaimanapun telah berjaya memohon kebenaran untuk merayu atas empat persoalan undang-undang, dan berikutan itu, menjadi kewajipan yang arif hakim-hakim mahkamah tertinggi di sini untuk mentelaah dan menjawab, antara lain, persoalan-persoalan berikut, iaitu: (i) sama ada Kerajaan Negeri boleh menebus hartanah tersebut tanpa keizinan dan arahan waris-waris arwah Ungku Abdullah, dan walau apapun, sama ada penebusan adalah menurut undang-undang; dan (ii) sama ada undang-undang penghadan terpakai kepada kes di sini. Selain dari isu-isu ini, plaintif-plaintif juga berhujah bahawa Mahkamah Rayuan telah melanggar kaedah-kaedah keadilan asasi dan keadilan prosedur, bilamana ia menangani "beberapa isu lain" yang tidak dibangkit atau dihujah oleh pihak-pihak.

Diputuskan (menolak rayuan dengan kos)
Oleh Raus Sharif HMP menyampaikan penghakiman mahkamah:

(1) Apa yang dipanggil "beberapa isu lain" yang ditangani oleh Mahkamah Rayuan adalah sebenarnya berkait dengan tiga isu utama yang diputuskan oleh Mahkamah Tinggi. Apa yang dibuat oleh Mahkamah Rayuan adalah bahawa ia telah membuat kajiselidik sendiri dan mendapatkan autoriti-autoritinya sendiri bagi menyokong taakulannya berhubung dengan ketiga-tiga isu yang diputuskan oleh yang arif hakim Mahkamah Tinggi. Tiada apa salahnya dengan tindakan Mahkamah Rayuan tersebut. Malah, para hakim adalah digalakkan supaya untuk membuat kajian mereka sendiri sebagai tambahan kepada hujahan dan autoriti yang dikemukakan oleh peguam-peguam. Oleh itu, isu pelanggaran keadilan asasi dan keadilan prosedur adalah suatu "non-issue" sebenarnya.

(2) Yang arif hakim Mahkamah Tinggi khilaf apabila mendapati pengambilan hartanah tersebut adalah batal dan tak sah. Plaintif-plaintif bergantung kepada surat bertarikh 29 Jun 1998 dari Penasihat Undang-Undang Negeri Johor dan keputusan carian hartanah tersebut bertarikh 28 Mei 1998 untuk mendakwa bahawa hartanah tersebut telah diambil dengan secara tak sah oleh Kerajaan Negeri. Dalam suratnya, Penasihat Undang-Undang Negeri telah membuat rujukan kepada s. 54 Enakmen 1950. Seksyen tersebut bagaimanapun dibangkitkan bagi maksud pembetulan hakmilik supaya hartanah tersebut boleh diserahmilik kepada Kerajaan Negeri. Ia bukanlah suatu tindakan pengambilan hartanah tersebut sepertimana yang biasa difahami di bawah Akta Pengambilan Tanah 1960. Oleh itu, rujukan kepada s. 54 Enakmen 1950 oleh plaintif-plaintif untuk mengasaskan tuntutan mereka adalah terpesong. Surat dari Penasihat Undang-Undang Negeri bertarikh 29 Jun 1998 jelas telah diambil di luar konteks.

(3) Berdasarkan fakta kes ini, hartanah tersebut telah kembali kepada Kerajaan Negeri apabila ianya digadai oleh Ungku Abdullah dan ditebus atas perintah Duli Yang Mulia Sultan Johor ketika itu. Dalam menggadai hartanah tersebut, Ungku Abdullah secara tidak langsung telah melantik chettiar sebagai kuasa wakilnya di mana pihak terkemudian tersebut berhak untuk menjual hartanah tersebut jika hutang tidak dibayar.

Oleh itu, apabila Kerajaan Negeri menyelesaikan hutang, hartanah tersebut dengan sahnya menjadi harta Kerajaan Negeri.

(4) Ianya mengikut bahawa jika waris-waris Ungku Abdullah mengatakan bahawa hartanah tersebut telah ditebus tanpa keizinan mereka, maka terpulanglah kepada mereka untuk mengenepikan penebusan pada ketika itu. Mereka gagal berbuat demikian dan dengan itu, setakat yang berkaitan dengan Kerajaan Negeri, penebusan tidak pernah diketepikan. Akibatnya adalah bahawa Kerajaan Negeri menjadi pemilik hartanah tersebut. Selain itu, penebusan berlaku lebih dari 115 tahun dahulu dan adalah terlalu lewat untuk waris-waris Ungku Abdullah mencabar penebusan hartanah tersebut. Pastinya, dalam kes ini, had masa telah pun bermula.

(5) Kesemua soalan-soalan, sepertimana yang dirangka, adalah tidak perlu dijawab. Soalan-soalan mengandaikan wujudnya suatu tindakan yang tak sah. Kewajipan adalah atas plaintif-plaintif untuk menunjukkan bahawa Kerajaan Negeri, dalam menebus hartanah tersebut pada tahun 1895, salah di sisi undang-undang. Plaintif-plaintif gagal berbuat demikian. Oleh itu, tiada asas bagi yang arif hakim Mahkamah Tinggi untuk memutuskan bahawa pemindahan hartanah tersebut melalui penebusan oleh Kerajaan Negeri adalah batal. Ianya mengikut bahawa dapatannya bahawa "masa masih berjalan dan undang-undang penghadan sama sekali tidak terpakai" adalah tidak boleh disokong.

Case(s) referred to:

Albion Hotel (Freshwater) Ltd v. Silva & Anor [2002] IRLR 200 ***(refd)***

Hadmor Productions Ltd & Ors v. Hamilton & Anor [1982] 2 WLR 322 ***(refd)***

Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors [1995] 2 CLJ 900 CA ***(refd)***

Terengganu Forest Products & Anor v. Cosco Container Lines Co Ltd and Anor & Other Applications [2011] 1 CLJ 51 FC ***(refd)***

The Country Council of Hereford and Worcester v. Neale [1986] ICR 471 ***(refd)***

Legislation referred to:

Land Enactment of the State of Johore 1950 (Johore Enactment No. 1), ss. 42, 54

A *For the appellants - Bastian Vendargon (PK Nathan & Anne Vendargon with him); M/s Bastian Vendargon*
For the respondents - Datuk Mohd Hafarizam Harun (Firoz Hussein Ahmad Jamaluddin, Cheng Mai & Syed Faisal Syed Abdullah with him); State Legal Advisor

B *[Editor's note: For the Court of Appeal judgment, please see Pengarah Tanah Dan Galian Johor & Anor v. Ungku Sulaiman Abd Majid & Anor [2010] 4 CLJ 166.]*

Reported by Wan Sharif Wan Ahmad

C

JUDGMENT

Raus Sharif FCJ:

D **Introduction**

[1] This is an appeal against the decision of the Court of Appeal, given on 19 August 2009 allowing the respondents' appeal. Leave to appeal was granted by this court on 7 April E 2010 on the following questions:

Question 1

Is the period of time between the date of death of a person and the grant of letters of administration to his personal F representatives, excluded from the calculation of any limitation period for bringing an action in court on behalf of the estate of that deceased person.

Question 2

G

When an act is a nullity, and that act is sought to be impugned by a declaration of rights in a court, is there a limitation period prescribed by any statute existing in Malaysia generally/specifically (and in the Unfederated Malay State of H Johor) for the filing of an action?

Question 3

By the Land Enactment of Johore 1950 (No. 1) can the State Government acquire alienated lands pursuant to s. 54 of the I Enactment without first complying s. 42 of the same Enactment.

Question 4

Was the law of adverse possession of lands in existence in the Unfederated Malay State of Johor in 1895? If the said law was in existence and applicable in Johor in 1895, does it apply to adverse possession merely of the land title/deeds, or can it only apply when adverse possession is in relation to the physical occupation and control of the subject lands?

[2] For convenience the parties will be referred to as the plaintiffs and defendants as in the trial court.

Background Facts

[3] The plaintiffs are the co-administrators of the estate of the late Ungku Abdullah. The estate was in relation to a property located in Johor Bahru measuring 6 acres O road 30 poles held under Geran 158, Lot 129, Bandaran Johor Bahru ("the said property").

[4] Ungku Abdullah died on 23 March 1893. Before his death, Ungku Abdullah had charged the said property to a chettiar in 1890. The property was later redeemed by Johore State Government in 1895 ("State Government") on the instruction of His Royal Highness the Sultan of Johore then. The said property was redeemed for the sum of RM8,000. The said property was subsequently reserved by way of a gazette notification *vide* GN 386 dated 10 May 1951 as a "Telecom Exchange Building Maintained by The Controller of Telecoms Johor".

[5] By way of petition for a letter of administration dated 26 June 1996, the Johor Bahru High Court appointed both the plaintiffs, as co-administrators of the estate. There were 624 beneficiaries to the estate.

[6] It is the plaintiffs' case that the said property was acquired by the State Government under s. 54 of the Land Enactment of Johore 1950 (No. 1) ("1950 Enactment") without informing and without paying any compensation and/or damages to the surviving beneficiaries of the late Ungku Abdullah. The plaintiffs claimed that the acquisition of the said property by the State Government was without basis and not valid in law. Therefore, the plaintiffs claimed against the State Government for the return of the said property and in the event that this could not be done, they claimed compensation and/or damages to be accorded to them together with other beneficiaries whose rights had been denied.

[7] The defendants on the other hand claimed that in 1895 the said property was acquired by the State Government after the State Government had redeemed the said property on the orders of His Royal Highness, the Sultan. Thereafter, the said property was transferred to the Federal Government to be used by the Controller of Telecoms, Johore. Thus, it is the defendants' case that the beneficiaries of the late Ungku Abdullah were barred by the law of limitation from making any claim for the said property. The stand taken by the State Government was illustrated in a letter written by the Johore State Legal Advisor dated as far back as 22 August 1972 to one of the beneficiaries of Ungku Abdullah which reads:

> **Per: Menuntut bayaran ganti-rugi atas Geran Melayu No. 158 Bandar Johor Bahru**
>
> Surat Ungku bertarikh 22hb Ogos, 1972 telah patek terima.
>
> 2. Patek dukacita menyatakan bahawa setelah patek siasat perkara ini, patek dapati tanah tersebut telah menjadi hak Kerajaan. Almarhom Ungku Abdullah telah menggadaikan tanah itu kepada sa-orang Chetti dalam tahun 1890, dan pada 23.3.1893 telah mangkat. Dalam tahun 1895 Kerajaan telah menebus gadaian itu. Kerajaan telah mengambil aleh tanah itu menjadi hak Kerajaan dan samenjak dari itu tidak ada apa-apa tindakan di-ambil untok meminta balek tanah itu daripada Kerajaan.
>
> 3. Di-masa ini tindakan Mahkamah ke-atas Kerajaan tidak boleh di-ambil oleh kerana tindakan itu akan di-halang oleh undang-undang batasan guaman (Limitation).
>
> (Mohd. Eusoff bin Chin)
> Penasehat Undang2 Negeri, Johor.

The High Court

[8] The learned High Court Judge found in favour of the plaintiffs and declared that:

(i) the redemption of the said property by the State Government in 1895 and the acquisition thereof was illegal;

(ii) the acquisition by the State Government under s. 54 of the 1950 Enactment was null and void;

(iii) the transfer of the said property by the State Government to the Federal Government was illegal and void under the law; and

(iv) in view of the fact that the Telecommunication Department is currently sited on the said property, the State Government is to compensate the plaintiffs and the beneficiaries by way of damages to be assessed by the Senior Assistant Registrar.

[9] The learned High Court Judge was of the view that the acquisition of the said property was null and void and hence "the law of limitation plays no part at all". The learned High Court Judge gave his reasoning as follows:

> This was a case where the law of limitation plays no part at all. In 1895, the Johore State Government redeemed the said property it was an act of benevolence: very friendly, very helpful and very charitable gesture – notwithstanding the fact that the beneficiaries of the late Ungku Abdullah were not told nor were their consent obtained before the redemptions were undertaken. After the said property had been redeemed in 1895, the Johore State Government purportedly held the title to the said property in total disregard to the legal rights of the beneficiaries of the late Ungku Abdullah. Surely the beneficiaries of the late Ungku Abdullah ought to be recognised by the Johore State Government when the said property was redeemed in 1895; they should not be side stepped since they are entitled, in law, to the estate of the late Ungku Abdullah.

[10] The learned High Court Judge further stated that:

> Since the said property was wrongly acquired under the wrong section of the Land Enactment (No. 1), time remained at large and the law of limitation was inapplicable and it cannot govern the outcome of the present case at all.

The Court Of Appeal

[11] The Court of Appeal unanimously allowed the defendants' appeal. The Court of Appeal held *inter alia* as follows:

(i) The affidavit filed by the Assistant Director Lands and Mines, Johor, and the accompanying exhibits provided an amalgam of credible evidence that clarified the status of the said property. The historical perspective extracted from the State Constitution and the treatise of authors referred to also

A assisted to embellish the position that during the period preceding 1910, His Royal Highness Sultan Ibrahim or the State Government possessed the legal capacity to hold lands for the state.

B (ii) The trial judge was in error in assuming that the land legislation applicable in this case had to be the 1950 Enactment. This is because, the 1950 Enactment itself indicated that as at 1910 there was already in place a legislation pertaining to land. As the redemption took place in C 1895, it was a fallacy to determine whether the 1950 Enactment was the appropriate legislation.

(iii) The reference to s. 54 of the 1950 Enactment was irrelevant. The section was only invoked by the state authority only for the purpose of rectification of the title that was to properly D vest the said property to the State Government. Therefore, the 1950 Enactment was wrongly considered to be applicable to determine the legality or otherwise of the alleged acquisition.

E (iv) The facts showed that the said property was redeemed in accordance with the law then in force and the plaintiffs had failed to adduce any evidence to show that the redemption was improper.

F (v) On the totality of evidence, the plaintiffs had failed on the balance of probabilities to prove that there had occurred an alleged deprivation of title to the said property. Their claim originated from a misconceived position that s. 54 of the 1950 Enactment was applicable.

G

This Court

Submissions

[12] Before us, learned counsel for the plaintiffs submitted that H there are three main issues identified and adjudicated upon by the learned High Court Judge, namely:

(i) Whether the State Government could redeem the said property without the consent and instructions of the I beneficiaries of the late Ungku Abdullah and whether such redemption was in accordance with the law and/or valid in law?;

(ii) Whether the acquisition of the said property under s. 54 of the 1950 Enactment was null and void?; and

(iii) Whether the law of limitation could be applied in the present case when the said property was acquired under the wrong section of the 1950 Enactment.

[13] It was submitted that the learned High Court Judge was right in his findings on the three issues. The Court of Appeal has therefore erred in reversing the findings of the learned High Court Judge. It was also submitted that the Court of Appeal in deciding with the three issues also dealt with some other issues which were not raised, argued or submitted upon. Therefore, it was submitted that the Court of Appeal was in breach of the rule of natural justice and procedural fairness. Basically, the complaints are these:

(i) the judgment contains material that was neither referred to nor raised by either party;

(ii) parties were never given an opportunity to submit on the various points addressed by the Court of Appeal. These points were never referred to nor raised in the first place by either party during proceedings; and

(iii) the matters raised were not found in the memorandum of appeal.

In support thereof, the learned counsel referred to the following authorities: *Hock Hua Bank (Sabah) Bhd v. Yong Liuk Thin & Ors* [1995] 2 CLJ 900; *Hadmor Productions Ltd & Ors v. Hamilton & Anor* [1982] 2 WLR 322; *Albion Hotel (Freshwater) Ltd v. Silva & Anor* [2002] IRLR 200 and *The Country Council of Hereford and Worcester v. Neale* [1986] ICR 471.

[14] Learned counsel for the defendants in asking this court to dismiss the plaintiffs' appeal, submitted that the fundamental factual basis of the plaintiffs' claim in the High Court had not been proven. It was submitted that the plaintiffs had failed to prove that:

(i) Ungku Abdullah and/or his beneficiaries still remained as owners of the said property even after the State Government paid RM8,000 to the chettiar for the land in 1895; and

(ii) Ungku Abdullah and/or his beneficiaries remained as the owner(s) of the land for the next 55 years prior to the purported 'wrongful acquisition' in 1950. Without these facts being first proven by the plaintiffs, the declaratory relief being sought by the plaintiffs in the High Court cannot be granted.

In a nutshell the defendant's case is that there was no proof that Ungku Abdullah remained the owner of the said property. We were asked to dismiss the appeal without us having to answer the questions posed.

Findings

[15] Let us first deal with the issue of breach of natural justice and procedural unfairness, on the part of the Court of Appeal, as raised by learned counsel for the plaintiffs. We have, read and re-read the judgment of the Court of Appeal and we find that the so called "some other issues" dealt with by the Court of Appeal were in fact related to the three main issues decided by the High Court. What the Court of Appeal had done was that it did its own research and produced its own authorities to support its reasoning in relation to the three issues decided by the learned High Court Judge. We are of the view that there is nothing wrong with that. In fact, judges are encouraged to do their own research to supplement the submissions and authorities submitted by counsel. Thus, the issue of breach of the rule of natural justice and procedural fairness is really a non-issue.

[16] The main issue in this appeal is whether the plaintiffs' claim was time-barred. The learned High Court Judge held that since the acquisition was null and void, the limitation did not set in and thus the claim was not time-barred. With respect, we disagree. Like the Court of Appeal, we are of the view that the learned High Court Judge had erred in holding that the acquisition of the said property was null and void.

[17] In this case, the plaintiffs relied on a letter dated 29 June 1998 from the State Legal Advisor, Johore and the result of a search of the said property dated 28 May 1998 to claim that the said property had been unlawfully acquired by the State Government. In the letter, the State Legal Advisor had made reference to s. 54 of the 1950 Enactment. But we are of the view that the section was invoked by the State Legal Advisor Johore

for the purposes of rectification of the title in order for the said property to be vested with the State Government. It was not the act of acquisition of the said property as is generally understood under the Land Acquisition Act 1960. Thus, the reference to s. 54 of the 1950 Enactment by the plaintiffs to ground their claim was wrong. The letter of the State Legal Advisor on 29 June 1998 was in our considered view taken out of context.

[18] It is clear on the facts of this case that the said property was restored to the State Government, when the said property was charged by Ungku Abdullah to the chettiar and was redeemed on the instruction of His Royal Highness, the Sultan of Johore then. That happened sometime in 1895. We are of the view that in charging the said property, Ungku Abdullah had indirectly appointed the chettiar to be his attorney and having the authority to sell the said property if the debt was not paid. Therefore, when the State Government settled the debt, the said property had lawfully become the property of the State Government.

[19] It follows that if Ungku Abdullah's beneficiaries are contending that the said property was redeemed by the State Government without the consent of the beneficiaries, it would be up to Ungku Abdullah's beneficiaries to set aside the redemption then. They failed to do so, and therefore, in so far as the State Government is concerned, the redemption was never set aside. The consequence of that would be, the State Government became the owner of the said property. The redemption took place in 1895. It was more than 115 years ago and we are of the view that it is too late now for the plaintiffs as beneficiaries of Ungku Abdullah to challenge redemption of the said property by the State Government. Surely in this case limitation has set in.

[20] Based on the above findings, we are of the view that all the questions in the manner drafted need not be answered. The questions pre-suppose that there was an act which was a nullity. The onus is on the plaintiffs to first show that the act of the State Government in redeeming the said property in 1895 was wrong in law and in breach of the laws in force at the material time. The plaintiffs had failed to do so. Thus, there is no basis for the learned High Court Judge to hold that the transfer of the said property by way of redemption by the State Government was a nullity. It follows that his finding that "time remained at large and the law of limitation was inapplicable and it cannot govern the outcome of the present case at all" cannot be supported.

[21] In *Terengganu Forest Products & Anor v. Cosco Container Lines Co Ltd and Anor & Other Applications* [2011] 1 CLJ 51, CJ Zaki Tun Azmi had said: "But in my opinion the appellate panel is not prevented from granting leave to amend the question allowed by the leave panel or even to add in new question in order to achieve the end of justice". We would like to add that the appellate panel after hearing the full appeal is also not prevented from not answering the questions posed by the leave panel. This is especially so, as in this case, where after hearing full arguments, the answers to the legal questions posed are not related to the facts of the case on appeal and to do so would be merely doing an academic exercise. The questions posed pre-suppose the redemption of the said property was improper or unlawful and the 1950 Enactment was the applicable law. But as we have pointed earlier the applicable law is not the 1950 Enactment.

Conclusion

[22] In the result, the appeal is dismissed with costs. We will now invite counsel to address us on the issue of costs.